IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 797 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANAJI DEVJI THAKOR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,
MRS SHILPA R SHAH for Appellant(s) : 1,
MR HM PRACHHAK, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM N.MEHTA

Date : 24/08/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

This appeal arises out of the judgment and order rendered by learned Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No.102 of 1998 on 21st July, 1999 convicting the appellant for the offence of murder of one Samdarben, wife of Keshaji Rupaji on 8th August, 1998 at about 9.00 a.m. in the outskirts of village Lavana, Taluka Tharad by giving axe blows on head and other vital parts of the body. The appellant also came to be convicted for the offence punishable under Section 135 of the Bombay Police Act. He is sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/- in default, to undergo R.I. for one year for the offence of murder and is sentenced to R.I. for four months and to pay fine of Rs.500/-, in default, to undergo R.I. for one month for the offence punishable under Section 135 of the Bombay Police Act.

2. The prosecution case, in brief, is that the deceased Samdarben was married to Keshaji Rupaji (p.w.2), who happens to be the cousin of the accused - appellant. The appellant is alleged to have an evil eye on deceased Samdarben and was alleged to be insisting upon her to maintain illicit relations which she denied. Samdarben also said about his demands to her husband Keshaji Rupaji who advised her not to divulge this to others as the appellant is his cousin.

2.1 On the day of the incident i.e. 8th August,

1998, the deceased alongwith Zebar and Gitaben left her house in the morning to fetch buttermilk from the house of Tarbhaji. Zebar and Gita returned to the house at about 8.00 a.m. but the deceased did not. On the other hand, Keshaji Rupaji became anxious when Samdarben did not return on usual time. He, therefore, started off to look for Samdarben. When he reached near the place of incident, he heard shouts raised by Samdarben and he, therefore, rushed to the place. He noticed that the appellant was inflicting axe blows indiscriminately on person of the deceased. The appellant fled from the place on seeing Keshaji. Keshaji found that the deceased had already expired. He, therefore, went home and informed his relatives. They all went to the Sarpanch and then they went to Tharad Police Station for lodging F.I.R. Tharad is located at a distance of about 33 kms. from the place of incident. The F.I.R. was lodged at about 12.30 p.m. and offence was registered. Investigation started on the basis of the F.I.R. and having found sufficient evidence against the appellant, the police filed chargesheet in the Court of J.M.F.C., Tharad. Since the offence of murder is triable exclusively by the Court of Sessions, learned J.M.F.C., Tharad committed the case to the Court of Sessions and Sessions Case No.102 of 1998 came to be registered.

2.2 Learned Additional Sessions Judge framed charge against the accused for offence of murder punishable under Section 302 as well as for offence

punishable under Section 135 of the Bombay Police Act (Exh.5). The accused pleaded not guilty to the charge and claimed to be tried. The prosecution led its evidence. Statement of the accused under Section 313 of CrPC was recorded where he has generally denied all the circumstances but submitted that he has been falsely implicated by Keshaji and the Sarpanch because of monetary disputes. He also stated that Gitaben Punmaji may be summoned to be examined as his defense witness. Gitaben was summoned and came to be examined as defense witness. The Trial Court, after considering the evidence led by the parties and the contentions raised before it, came to the conclusion that the prosecution was successful in establishing charges against the accused – appellant and recorded conviction and passed sentence, as stated above.

3. We have heard learned advocate Ms. Shilpa Shah and Mr. Prachhak, learned APP. We have examined the record and proceedings which is before us.

4. Learned advocate for the appellant submitted that the prosecution case has been accepted by the Trial Court mainly on the deposition of Keshaji Rupaji (Exh.11) and the circumstance that the 'Adhivato' (dhoti) of accused was found to contain blood stains of the group of the deceased. Learned advocate submitted that Keshaji is the husband of the deceased and is, therefore, an interested witness. He also could not have been an eye-witness to the

incident if the evidence in respect of time is considered. She submitted that though this witness says that the incident occurred at 9.00 a.m., there is evidence of Meraji who says that Keshaji came to him at about 8.00/8.30 a.m. and informed him about the incident. The incident, therefore, must have occurred prior to 8.00 a.m. On this very aspect, learned advocate submitted that Keshaji had no reason to be anxious about non-return of the deceased because she had left for collecting buttermilk from the house of Tarbhaji around 7.00-7.30 a.m. and the incident had occurred before 8 o'clock. She, therefore, submitted that the defense theory of Keshaji himself having followed the deceased and done her to death is quite probable. It was submitted by learned advocate for the appellant that the F.I.R. is given after about four hours at 12.30 p.m. after due deliberations amongst the family members and the Sarpanch. The learned advocate for the appellant submitted that the investigating agency has not taken blood sample of the accused and, therefore, no inference could have been drawn that the blood found on the dhoti of the appellant was that of the deceased. The appellant is an agriculturist and he could have sustained injury even while working in the field and the blood found on his dhoti could have been his own. The learned advocate submitted that if conduct of the appellant is seen, he has not fled from the town and is arrested at about 7.45 in the evening on that very day. She submitted that if the dhoti, in fact, contained blood-stains of the

deceased, the conduct of the appellant would have been to change the clothes or to at least wash out the blood stains and, therefore, looking to his conduct, his innocence has to be inferred. She, therefore, submitted that the Trial Court has failed to appreciate all these aspects while recording conviction and, therefore, the appeal may be allowed and the appellant may be acquitted of the charges levelled against him.

5. Learned APP has opposed this appeal. According to him, there are no reasons whatsoever to doubt deposition of Keshaji Rupaji. Keshaji Rupaji has no reason to tell a false story and falsely implicate the appellant, who is his own cousin. Looking to the conduct of Keshaji Rupaji, he is a person who has great regard for family affairs when he asked his wife not to disclose to anyone the conduct of the appellant of demanding illicit relations. Mr. Prachhak submitted that the witnesses are villagers and may not be accurate on timing aspect. He submitted that when Meraji says that the accused came to his place at about 8.00-8.30 a.m. and told him about the incident, he may be at error because Meraji himself, at a later point of time, during cross-examination, states that Zebar and Gita who had gone with the deceased to fetch buttermilk, returned home at about 8.00 a.m. and at that point of time, Keshaji was at home. He did not ask anything to either Zebar or Gita about deceased Samdar and, therefore, the defense theory may not be

accepted. The defense case that there was no need for Keshaji to be anxious also may not accepted because of this time frame. The defense has changed its stance from time to time but has not been able to indicate any reason why Keshaji should not be believed. Mr. Prachhak, therefore, submitted that the Trial Court has considered all relevant aspects while recording conviction and, therefore, this court may not interfere with the findings.

6. We have taken into consideration the rival side contentions so also have examined the evidence from their respective angles.

7. If evidence of p.w.1 - Dr. Deepak Dharmaji Gahlot and the post-mortem notes prepared by him at Exh.9 are seen, there is no room to doubt that the deceased met with a homicidal death. There were as many as 11 external injuries caused to the deceased on various vital parts of the body with 7 corresponding internal injuries. To quote only one of them, the trachea was cut and according to the doctor, the deceased died because of haemorragic shock due to cutting of major vessels of neck. Therefore, we do not have any hesitation in concluding that the deceased met with a homicidal death.

8. On the question as to whether the accused – appellant is connected with the homicidal death of the deceased by evidence, we find that there is

evidence of Keshaji Rupaji at Exh.11. He is an eye-witness to the incident. He happens to be the husband of the deceased and cousin of the appellant. He has deposed that his wife Samdar had told him that the appellant is insisting upon her to keep illicit relations and he told her that she should not tell this to anyone just to prevent quarrel amongst brothers. He says that on 8th August, 1998, after usual morning tea, the deceased went to the field of Tarbhaji for collecting buttermilk. As she did not come back for a long time, he went to look for her. When he was near the Motisari pond, he heard shouts of his wife Samdar for rescue. He rushed over there and saw the appellant inflicting axe blows on the deceased. On seeing him, the appellant ran away throwing the axe on the spot. The witness then says that he found that Samdar had expired. He, therefore, went home and told Meruji about the incident. Meruji called his other brothers and father and thereafter they went to the house of Sarpanch Anaji and Waghaji Kalaji and told them about the incident. Thereafter, all of them went to the place of incident and from there, they went to Tharad Police Station for lodging the F.I.R. which is at Exh.12. According to him, the incident occurred at about 9.00 a.m.

8.1 The witness is cross-examined at length. Despite close scrutiny, we are unable to find any cross-examination relating to the incident except a couple of questions on topography of the place of

incident. There is no challenge to the version of the witness on actual incident. In cross-examination, it is suggested that the deceased had illicit relations with the appellant about which the witness was aware and had scolded the deceased about the same but as there was no improvement in her behaviour, the witness followed deceased Samdar and on finding Samdar standing near Motisari Talav, asked her as to why she is standing there and she told him that she is waiting for the appellant and, therefore, he committed an assault on her with axe and murdered her. All these suggestions have been denied by the witness.

9. It is settled proposition of law that evidence of a relative or interested witness cannot be discarded only on that ground unless it is shown that the evidence suffers from other defects rendering it doubtful. In the instant case, there is no reason to doubt deposition of Keshaji Rupaji (p.w.2) who is an eye-witness to the incident. His anxiety on non-return of the deceased within reasonable time is justified. The contention regarding timing aspect is difficult to be accepted. The witnesses are rustic villagers and it would be unreasonable to expect accuracy on timing aspect from them. If the evidence of Meraji (Exh.28) is seen, on which heavy reliance is placed by the appellant's advocate, in examination-in-chief, he says that Keshaji came to him at about 8.00-8.30 a.m. and told him about the incident. It was, therefore, canvassed

that the incident must have occurred before 8.00 a.m. It is, however, not possible to accept this contention from what emerges from cross-examination of this witness. During cross-examination, he says that deceased Samdar, Zebar and Gita had gone together to fetch buttermilk. The two girls came back at about 8.00 a.m. but Samdar did not. When the two girls came back, Keshaji was at home. He did not ask anything to the two girls about Samdar. It is, therefore, obvious that till 8 o'clock, Keshaji was at home and thereafter, finding that Samdar had not come back, he may have left in search of Samdar. The anxiety of Keshaji also gets justification from these pieces of evidence that if Zebar and Gita who had left with the deceased for the same work came back, but not Samdar and, therefore, the contention that there was no need for Keshaji to be anxious cannot be accepted.

9.1 The contention that the F.I.R. is lodged late after due deliberations is also difficult to be accepted. When Keshaji noticed that his wife was done to death by the appellant, it is natural that he would go home and inform his relatives. As observed earlier, the first informant Keshaji and even for that matter, the appellant, they all belong to a very small village and belong to a strata of society where education level is not so high and, therefore, it is natural that they get together, go to the place of incident and then go to the police for lodging the F.I.R. This entire exercise does not seem to have

taken much time for the reason that the F.I.R. was lodged at about 12.30 p.m. at Tharad Police Station which is at a distance of about 33 kms. from the place of incident. The incident has occurred at about 9.00 a.m. and within 3½ hours, the entire exercise is over. That contention also cannot be accepted.

9.2 The last contention is regarding the conduct of the appellant. We find that the appellant was arrested by the police in the evening about 7.45 p.m. During the period between time of incident and arrest, where was he is not coming on record but he is a close relative of the first informant and the deceased. In a small village, if such incident occurs the news would spread quickly but he is not found to be anywhere near any of these relatives during the day and, therefore, necessary inference is that he had taken a rendezvous somewhere till he was arrested. Further, when he was arrested, his dhoti was found blood-stained. That blood has been analysed by the F.S.L. to be that of the same group as that of the deceased. There was no injury on his person when he was arrested and, therefore, there is no possibility of the blood being that of his own or of anybody else when he has not taken that plea at all. This is a strong circumstance which adds to the credibility of deposition of Keshaji Rupaji. The Trial Court was, therefore, justified in coming to the conclusion that the prosecution was successful in establishing charge of murder against the appellant.

9.3 We may refer to the deposition of defense witness no.1 – Gita who happens to be the niece of the accused. She was interrogated by the police, was cited as a witness, was summoned as a witness but was dropped as a prosecution witness for obvious reasons stated in the dropping purshis (Exh.24). She has tried to support the defense version by saying that she had seen Keshaji following the deceased with an axe but then she admits that she is stating this for the first time before the court. Her original version was obviously different. This evidence, therefore, does not help the appellant in any way.

10. The notification under Section 37(1) of the Bombay Police Act dated 04th August, 1998 issued by District Magistrate, Banaskantha is produced at Exh.33. It was effective for the period between 04th August, 1998 to 31st August, 1998. The incident is of 08th August, 1998 and was, therefore, in force on the day of the incident. The appellant is found to have used an Axe in commission of the principal offence. There is no need for interference for the offence punishable under Section 135 of the Bombay Police Act and is required to be confirmed.

11. Having examined the evidence on record and having gone through the judgment of the Trial Court, we are of the view that the Trial Court was justified in recording convictions. There is no room for any interference in exercise of appellate powers in the

verdict of the Trial Court. We do not find any merit in the appeal. The appeal, therefore, must fail and accordingly stands dismissed. The judgment and order dated 21st July, 1999 rendered by learned Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No.102 of 1998 stands confirmed.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

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